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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,774	02/25/2002	Gregory P. Fitzpatrick	BOC9-2001-0002 (238)	4419
40987	7590	01/28/2008	EXAMINER	
AKERMAN SENTERFITT			BRINEY III, WALTER F	
P. O. BOX 3188			ART UNIT	PAPER NUMBER
WEST PALM BEACH, FL 33402-3188			2615	
		MAIL DATE	DELIVERY MODE	
		01/28/2008	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/082,774	FITZPATRICK ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Walter F. Briney III	2615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 October 2007.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3-11 and 13-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3-11 and 13-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____.                                     |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____.                         |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10 October 2007 has been entered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. **Claims 1, 3-11 and 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,263,064 (filed 29 January 1999) (herein *O'Neal*) in view of US Patent 6,631,186 B1 (filed 21 November 2000) (herein *Adams*) in view of US Patent 5,436,963 (filed 19 January 1995) (herein *Fitzpatrick*) and further in view of US Patent 6,697,473 B2 (filed 13 November 2001) (herein *Batten*).**

**Claim 1** is limited to a method of message delivery. Applicant's instant amendment modifies the scope of the method, modifies the registering step and adds four steps: initiating a first communication link by a sending party, interpreting the received reception state data by the sending party, instructing the communications system how to process said first initiated

communications link by the sending party and processing said first initiated communications link based on the instructions from the second party.

The ambit of the claim 1 method now includes facilitating message delivery and conferencing within a communications system. *O'Neal* discloses a system for facilitating message delivery since, for example, it allows a caller to execute a follow-me service to track down a called party. *O'Neal* at col. 12 ll. 5-9. Simply facilitating conferencing is such a broad statement that it amounts to no positive claim limitation. Moreover, none of the other claim limitations are related to a conferencing function. Without positive method steps recited in the preamble nor connection between the claim body's method steps and the preamble, the facilitating of conferencing appears to be a mere statement of intended use afforded no patentable weight. *See Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165 (Fed. Cir. 1999); *see also Rowe v. Dror*, 112 F.3d 473, 478, 42 USPQ2d 1550, 1553 (Fed. Cir. 1997) (“where a patentee defines a structurally complete invention in the claim body and uses the preamble only to state a purpose or intended use for the invention, the preamble is not a claim limitation”).

In the previous claim iteration, the registering step required defining categories of messages, where the categories were associated with at least one of a purpose of the message and an identity of the [message] sending party. Claims at 2 (21 May 2007). The registering step now requires the categories of messages to be based on a nature of each message, where the nature is determined from the purpose of the message and the identity of the [message] sending party. The difference between the previous and instant claims is that the instant claims base the categories on both the purpose of the message and the identity of the sending party whereas the

previous claims required association only with one of the purpose of the message and the identity of the sending party. Note that the terms “associated with” (previous claims) and “based on” (instant claims) appear to be used equivalently by applicant so the only difference is the number of parameters used to categorize messages.

The immediately previous rejection of claim 1 indicated that *Adams* teaches categorizing incoming calls based on the identity of the caller (i.e. sending party). Final Rejection at 2-3 (10 August 2007) (incorporating by reference Non-Final Rejection at 6-7, claim 3 (05 April 2006) (*Adams* includes a priority screening list listing those caller numbers that will cause calls from those callers to not be forwarded to a calling party’s forwarding telephone number)). Incorporating *Adams* into *O’Neal* produces a system that categorizes callers as those allowed to receive call forwarding assistance from the *O’Neal* control center and as those that are not allowed to receive assistance. *Id.* *Adams* into *O’Neal* concededly does not take into account the purpose of the call and the identity of the sending party, just the identity. However, the prior art makes obvious this deficiency. For example, *Batten* teaches an automated personalized telephone management system that handles calls based not only on caller identifications but also based on whether a call is an emergency or not. *Batten* at col. 3 ll. 38-54. Whether a call is an emergency or not is a determination of the calls purpose since an emergency call is made as a call for immediate action by the called party, whereas non-emergency calls comprise other species of purpose not requiring immediate action. *Batten* teaches that identifying emergency calls allows emergency calls to pass caller identification screening so that emergency calls are not missed. *Id.* Receiving an emergency call is clearly advantageous over not receiving an emergency call since the delay arising from missing the call might result in missing the

opportunity for remedial action against the cause for emergency. It would have been obvious to one of ordinary skill in the art at the time of the invention to screen calls based on caller identification and whether the call is an emergency for the purpose of receiving all emergency calls regardless of whether the emergency caller's number is not registered as a number allowed to access call forwarding assistance ala *Adams*.

The new four steps are taught by the prior art combination of *O'Neal*, *Adams*, *Fitzpatrick* and *Batten*. *O'Neal* discloses receiving at the call center a calling party's call at step 502, which call inherently requires an initiation over a first communication link. *O'Neal* at fig.5. *O'Neal* discloses informing a caller about how a called party would like to be contacted and letting the caller decide how to proceed. *O'Neal* at col. 12 ll. 18-29 (system provides caller with instructions; system allows caller to respond based on caller's demand to contact called party; system receives caller's demand to contact; system connects called party to called party's follow-me numbers). The caller informing the *O'Neal* system of the caller's demand to contact the called party is the manifestation of an interpretation of an instruction asking whether the caller wishes to contact the called party through the follow-me service. The demand itself is clearly an instruction to the *O'Neal* system on how to process the initial communication link established in step 502, since the demand indicates whether to execute the follow-me service. Subsequent execution of the follow-me service, thus, corresponds to the processing said first initiated communications link based on the instruction from the sending party since the execution handles the caller's call from step 502 based on the caller's demand just like the processing processes the first initiated communications link based on the instruction from the sending party. The

remaining claim limitations not treated *supra* remain rejected for the same reasons set forth in the Final Rejection at 2-4 (10 August 2007).

**Claims 3-11 and 13-20** as instantly amended include the new limitations apropos claim 1—the registering step and the new steps. These limitations are accordingly rejected for the same reasons *supra*. The remaining limitations of these claims not treated apropos claim 1 *supra* are rejected for the same reasons set forth in the Final Rejection at 4-5 (10 August 2007).

#### ***Response to Arguments***

Applicant's instant arguments have been fully considered but are moot in view of new grounds of rejection.

Applicant alleges that in all of the cited references, completion of the communication or alternate routing is determined by the receiver/subscriber, which determination cannot be overridden. Applicant Arguments at 11 (10 October 2007). Applicant's allegation, however, is soundly refuted by *O'Neal* at col. 12 ll. 30-31 ("if the follow me service is enabled by the subscriber and *chosen by the caller...*").

Applicant alleges that the claimed invention screens calls based on the nature of the call (examiner assumes applicant means the purpose of the call since the nature includes caller identification) and the identity of the caller. Applicant Arguments at 11 (10 October 2007). This allegation is rendered moot in view of the new grounds of rejection treating the limitation in question.

Applicant alleges that the claimed invention allows for multiple parties conferencing at the same time. While applicant alleges these features as limitations of claims 9-10 and 19-20,

applicant makes no allegation of the cited prior art's deficiency in treating these limitations.

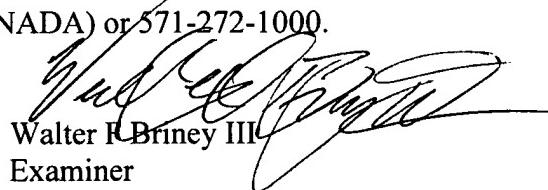
Moreover, claims 9-10 and 19-20 are very broad and do not unambiguously set forth conferencing or simultaneous multiple media use. Such limitations, in any case, are probably obvious given the prevalence of teleconferencing systems.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter F. Briney III whose telephone number is 571-272-7513. The examiner can normally be reached on M-F 8am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Walter F. Briney III  
Examiner

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